

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations.
(Austwell, Refugio, and Victoria, Texas)
MB Docket No. 05-154
RM-11224
RM-11250

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 19, 2006

Released: July 21, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Notice of Proposed Rule Making issued in response to a petition for rule making filed by Katherine Pyeatt ("Petitioner"), requesting the allotment of Channel 290A at Victoria, Texas as a sixth FM commercial broadcast service, and a change in reference coordinates for vacant Channel 291A at Refugio, Texas to accommodate the proposed allotment (RM-11224). Petitioner filed comments stating her continuing interest but subsequently filed a "Request for Approval of Withdrawal" seeking dismissal of her petition. Voz de la Raza ("Voz") timely filed a counterproposal proposing to allot Channel 290A at Austwell, Texas as a first local aural transmission service which also requires a change in reference coordinates of Channel 291A at Refugio (RM-11250).

2. It is the Commission's policy to refrain from making an allotment to a community absent an adequate expression of interest. Petitioner states that no consideration has been paid or promised, directly or indirectly for withdrawing its petition. No other party has expressed an interest in the allotment of Channel 290A at Victoria. Therefore, we dismiss Petitioner's petition to allot Channel 290A at Victoria, Texas. Next we consider Voz's counterproposal.

3. We find that Austwell is a community for allotment purposes and that the public interest would be served by allotting Channel 290A as a first local aural transmission service. Channel 290A can be allotted to Austwell consistent with the Commission's minimum distance separation requirements at 28-23-40 North Latitude ("NL") and 96-41-17 West Longitude ("WL") with a site restriction of 15.1 kilometers (9.4 miles) east of the community. Since Austwell is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested but has not been obtained. If a construction permit for Channel 290A at Austwell, Texas is granted prior to the Commission's receipt of formal concurrence in the allotment by the Mexican government, the

1 See Steamboat Springs, Colorado, et al., Notice of Proposed Rule Making, 20 FCC Rcd 6327 (MB 2005) ("Notice") (The instant Report and Order disposes of one docket in this multiple docket Notice.).

2 The counterproposal was placed on Public Notice on June 24, 2005, Report No. 2717, (RM-11250).

3 47 C.F.R. § 1.420(j).

4 Austwell is listed as a city with a population of 192 persons according to the 2000 U.S. Census. Voz states that Austwell is incorporated, has a city hall, post office, municipally provided water service, and administers the Austwell-Tivoli Independent School District.

construction permit will include the following condition: "Use of this allotment is subject to suspension, modification, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement of if specifically objected to by Mexico's Secretaria de Comunicaciones Y Transportes." To accommodate the Austwell allotment, the coordinates of vacant Channel 291A at Refugio are changed to 28-19-44 NL and 97-24-59 WL with a site restriction of 14.1 kilometers (8.8 miles) west of Refugio. Mexican concurrence was previously obtained for this channel.

4. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. Section 801(a)(1)(A).

5. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective, September 5, 2006, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED for the community listed below, as follows:

<u>Community</u>	<u>Channel No.</u>
Austwell, Texas	290A

6. A filing window period for Channel 290A at Austwell, Texas will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

7. IT IS FURTHER ORDERED, That the Petition for Rule Making filed by Katherine Pyeatt IS DISMISSED.

8. IT IS FURTHER ORDERED, That the counterproposal filed by Voz de la Raza IS GRANTED.

9. IT IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Helen McLean, Media Bureau, (202) 418-2738.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau